

# FROM CONGRESS TO THE SUBURBS: LOCAL INITIATIVES TO REGULATE IMMIGRATION IN THE UNITED STATES



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**ABSTRACT.** This paper analyzes the implications of local ordinances and law initiatives aimed at controlling immigration, which have been proposed in various states and cities in the United States in the context of the failure of immigration reform in Congress. The first part describes the role of local and state authorities in the enforcement of immigration laws and the federal and local changes undergone after September 11, 2001. The second part focuses on recent examples of legal ordinances and other responses on the part of governments and local assemblies faced with the growth of undocumented immigration. The third part looks at these issues in the context of the U.S. immigration debate, and considers the challenges it represents for the Mexican government as well as the possibilities that it offers in terms of working together with various actors at the local level who provide support for Mexican immigrants in the United States.

**KEYWORDS:** Mexico-United States immigration; immigration policy; immigration reform; undocumented immigration; ordinances; day-laborers.

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## INTRODUCTION

After the attacks of September 11, 2001 on the World Trade Center, the immigration debate in the United States has focused on aspects of national security and regulatory measures have emphasized border control. This has had a negative impact on the country's immigrant population regardless of their legal status, fueling an anti-immigrant discourse on the part of groups that associate migration with terrorism, crime, violence and the loss of U.S. "values". Those who continue to cross the border through dangerous routes are increasingly at risk, and resident immigrants—particularly those with irregular status—are now more vulnerable to human rights violations. An equally worrisome trend is the specific targeting of Hispanics. Since 2001, local and state governments in the United States have decided to implement their own immigration control measures, an attitude that reflects the concerns of certain sectors of U.S. society who feel "threatened" by the increased flow of Hispanic immigrants to suburban localities where they were traditionally absent or comprised a very small minority. Given the circumstances, the work of civilian groups and organizations that support and defend undocumented immigrants has become vital in the prevention of potential discriminatory measures and human rights violations. In several cases, these efforts have met with unexpected success and helped set important precedents in immigration debate and legislation.

The current situation illustrates the historical divisions that have characterized U.S. government and society: what are the costs and benefits of immigration and how should immigration flow be regulated? In a climate where, after the 2001 attacks, security and migration have become intertwined topics, it is also a reflection of local frustration with current federal immigration policies. This is particularly true of areas that, until now, had not experienced massive immigration flow. Civil organizations that support immigrants' rights have played an increasingly important role in the immigration debate, and their work could substantially influence pertinent legislation.

The first part of this essay describes the role of local and state authorities in the enforcement of immigration laws and the federal and local changes undergone after September 11, 2001. The second focuses on recent examples of legal ordinances and other responses on the part of governments and local assemblies faced with the growth of undocumented immigration. The third part looks at these issues in the context of the U.S. immigration debate, and considers the challenges it represents for the Mexican government as well as the possibilities that it offers in terms of working together with various actors at the local level who provide support for Mexican immigrants in the United States.



## LOCAL AUTHORITIES AND THEIR ROLE IN THE ENFORCEMENT OF IMMIGRATION LAW

In the United States, the federal Congress has exclusive authority over immigration laws and their enforcement. Until 1996, the Immigration and Naturalization Act (INA) allowed local and state authorities to arrest and detain those found to be in violation of these laws (e.g. trafficking in persons) but did not authorize detention on suspicion of civil violations (e.g. illegal presence in the country) even though, in these cases, they could support the work of federal authorities. In 1996, Congress approved the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which gave local and state authorities the power to detain undocumented immigrants with previous crime convictions in the United States. IIRIRA stipulates that state or local police can enforce civil immigration laws in the following cases: when there is “mass influx of aliens” as defined by INA, when the situation requires an immediate response on the part of the federal government, and when officials obtain permission from the state or local department in charge. These laws imply that local authorities can undertake certain tasks normally reserved for the federal government, but only in specific cases and under certain conditions. Under IIRIRA, state and local authorities can establish a formal, voluntary agreement in the form of a Memorandum of Understanding with the Immigration and Customs Enforcement (ICE) that allows them to take up certain responsibilities involving the enforcement of immigration laws. The Memorandum requires the police force to undergo proper training, establishes specific prohibitions in regards to the enforcement of civil immigration laws and forces local entities to cover related expenses. If a state or township does not want to follow this agreement or has laws that prevent it from proceeding in such a manner it is free to refuse, and the refusal does not incur any penalties. According to the National Immigration Forum (2004), no townships had finalized negotiations involving the Memorandum before the September 11 attacks (although at least one, Salt Lake City, had tried).<sup>1</sup> In spite of opposition by certain local authorities, police heads, civil rights organizations and representatives of Latino groups, by June 2007, 21 police departments in 11 states had established agreements with the ICE; at least 375 police officers had received the corresponding training and 71 applications for agreements were pending.<sup>2</sup>

Finally, IIRIRA allowed government employees to rely information on a given individual’s immigration status to the Immigration and Naturalization Services (INS) (now the US Citizenship and Immigration Services, or USCIS, and part of the Department of Homeland Security since 2003). This, however, does not require

<sup>1</sup> Following consultation with local residents, the Salt Lake City Council vetoed the Memorandum after the city had finished negotiations with the Department of Justice (see National Immigration Forum, 2004).

<sup>2</sup> “Suburb seeking power to deport”, *Chicago Tribune*, June 20, 2007.



them to use this information and does not give them the right to investigate an individual's immigration status. On the other hand, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), also passed in 1996, requires that federal and local welfare agencies report "illegal aliens" to immigration authorities.

Some states and townships reacted negatively to these laws, arguing that the implementation of such measures would result in popular mistrust of authorities and people would avoid reporting incidents or giving testimony for fear of having their immigration status questioned. In order to avoid this, some cities issued resolutions that barred police from enforcing immigration laws and/or instructed public officials to provide services regardless of immigration status.

After the September 11 attacks, the government toughened internal security measures and immigration control. The Department of Justice requested the assistance of local and state police in the reinforcement of anti-terrorist measures, including the enforcement of immigration law: the federal government, they argued, does not have enough money or personnel to do this on its own. The Department's request concerning the interrogation of individuals under suspicion of having terrorist ties despite the absence of any actual crimes met with resistance on the part of some local and state police forces. According to the National Immigration Forum, more than twenty cities and counties, as well as three states, have implemented policies that restrict local police collaboration with federal immigration departments.

In 2002, the Attorney General announced the creation of the National Security Entry-Exit Registration System (NSEERS) and the National Crime Information Center (NCIC). Again, the help of local and state police was requested and they were granted "inherent authority" to arrest and detain those who broke immigration law and were registered in the NCIC database—a scope of action involving both the criminal and the civil. However, this new policy was not clearly established: some cities continued to negotiate their Memorandums of Understanding despite the fact that these new measures had rendered them unnecessary. After the creation of the Department of Homeland Security in late 2002, several new initiatives sought to reinforce federal and local cooperation in order to facilitate the investigation, arrest and detention of immigrants found in violation of the law (Seghetti et al., 2004: 6). Still, the role of local authorities remained uncertain. In order to address this issue, Congress introduced the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR Act; H.R. 2671) and the Homeland Security Enhancement Act of 2003 (S. 1906), which expand the role of local law enforcement in regards to civil immigration law but have yet to be approved.<sup>3</sup>

All of this has led to a debate about what role should local and state police play in the enforcement of immigration law and how this affects local and state

<sup>3</sup> The Homeland Security Enhancement Act was reintroduced in 2005 as S. 1362; it has yet to be approved.



governments. On the one hand, there are concerns about lack of local funds and, since the enforcement of immigration law is the federal government's responsibility, it is argued that state resources should not be used for this purpose. Additionally, this might hamper the overall work of local police forces (Seghetti *et al.*, 2004: 24-25, 27; National Immigration Forum, 2004). On the other hand, the federal government cannot guarantee an extensive infrastructure for detention centers, and this would become the responsibility of local governments. While some argue that local law enforcement participation will significantly reduce terrorist threats and help in the enforcement of immigration law (Seghetti *et al.*, 2004: 28) others counter that the lack of training and experience on the part of local authorities could result in abuses of power, civil rights violations and racial discrimination based on profiling (Seghetti *et al.*, 2004: 26-27), not to mention the resultant lack of popular cooperation with authorities and the isolation of immigrants.

A clear division has emerged between townships: those willing to participate in the enforcement of immigration law and those that prefer to serve as 'sanctuaries' for undocumented immigrants and avoid denouncing them to federal authorities.<sup>4</sup> One problem is that these local differences could result in an inconsistent application of the law that is dependent on jurisdictional particularities, propitiating complaints of unequal treatment and discrimination. Those who support local immigration law enforcement argue that each jurisdiction has different needs and problems and this should be recognized in the implementation of the law (Seghetti *et al.*, 2004: 28-29).

Despite the legislative changes undertaken since 1996, Congress maintains exclusive authority over who enters and/or remains in the United States and with what rights. The ongoing debate about local enforcement of immigration law under federal criteria that attend both criminal and civil aspects calls into question jurisdictional boundaries (Seghetti *et al.*, 2004: 8-9) at the same time that it reveals internal divisions over how to deal with immigration flow and popular frustration over a dysfunctional immigration system.

## LOCAL RESPONSES

### *Ordinances and initiatives*

After September 11, the evident need to reform and update the immigration system, secure borders and resolve the status of almost 11 million undocumented resident immigrants has been the source of ongoing discussions. Despite a wealth

<sup>4</sup> In 2004, the Congressional Research Service reported that the following 32 cities and counties had "sanctuary policies": Anchorage, AK; Fairbanks, AK; Chandler, AZ; Fresno, CA; Los Angeles,



of initiatives proposed by the government, members of Congress and senators, as well as public demonstrations by a diversity of social sectors, both in favor and against integral reform, there have been no major developments. The recent reinforcement of border measures has failed to convince many that this will solve a deeply rooted problem. Faced with federal failure, local government and assemblies around the country, from San Bernardino, California to Suffolk County, New York, have decided to issue their own laws and ordinances to deal with the growth of undocumented immigration. In 2006, about 80 immigration-related laws were passed in at least 32 states<sup>5</sup> In 2007, by June, 1,170 law initiatives had been introduced in 50 states.<sup>6</sup> Most of these involve the implementation of regulatory measures in suburban communities where the increase of Hispanic immigration is perceived as a linguistic and cultural threat. Usually, these communities have little experience with immigrant flow. For example, the mayor of Hazleton, Pennsylvania, Lou Barletta, claims that undocumented immigration is affecting the city's quality of life, increasing crime and overwhelming schools and hospitals (Kroft, 2006).

In order to discourage undocumented immigrants or forcibly drive out those who have already settled, some local governments have instituted measures that penalize landlords who rent property to undocumented immigrants. Examples include Hazleton and Altoona, PA; Escondido and San Bernardino, CA; Cobb County and Cherokee County, GA; Manassas and Culpeper, VA; Riverside, NJ; Farmers Branch, TX; Harrington and Elsmere, DE; Avon Park, FL and Valley Park, MO). In Farmingville, New York, suspected undocumented immigrants were evicted from over-crowded properties. Other initiatives seek to strengthen employment-related controls and sanctions, proscribing the hiring of undocumented immigrants. This has been the case in the townships of Suffolk County, NY; Altoona and Hazleton, PA; Riverside, NJ; Beaufort County and Dorchester County, SC; Harrington and Elsmere, DE; Herndon and Culpeper, VA; Palm Bay, FL; Valley Park, MO; Farmers Branch, TX. The states of Colorado, Arizona, Alabama, Arkansas, Georgia, Missouri and Pennsylvania have all implemented such measures.<sup>7</sup>

CA; San Diego, CA; San Francisco, CA; Sonoma County, CA; Evanston, IL; Cicero, IL; Cambridge, MA; Orleans, MA; Portland, ME; Baltimore, MD; Takoma Park, MD; Ann Arbor, MI; Detroit, MI; Minneapolis, MN; Durham, NC; Albuquerque, NM; Aztec, NM; Rio Arriba, County, NM; Sante Fe, NM; Nueva York, NY; Ashland, OR; Gaston, OR; Marion County, OR; Austin, TX; Houston, TX; Katy, TX; Seattle, WA; y Madison, WI (Seghetti *et al.*, 2004: 2-4, 24 and note 75). Currently, it is estimated that there are about 100 cities with formal or informal sanctuary policies.

<sup>5</sup> See MPI, 2006, and Harlow, 2006.

<sup>6</sup> "Frustrated by federal inaction, state and local governments are passing laws at a record pace", *The Christian Science Monitor*, June 15, 2007; "Illegal Immigrants Targeted By States", *The Washington Post*, June 25, 2007).

<sup>7</sup> See "Sistema de Monitoreo sobre Iniciativas Locales en Materia de Control Migratorio", Instituto de los Mexicanos en el Exterior, México D.F., July, 2007 (<http://www.ime.gov.mx/smilcm.htm>)



Several states have suggested limiting undocumented residents' access to public services (e.g. Colorado<sup>8</sup> and Arizona<sup>9</sup>) and some towns have sought to keep them from obtaining business licenses (e.g. Herndon, VA and Hilton Head, SC). As we shall see later, many townships have tried to regulate the presence of day-laborers on the streets and ban hiring centers. Finally, some states and cities have tried to institute English as their official language (e.g. Arizona; Cherokee County, GA; Taneytown, MD; Valley Park, MO; Pahrump, NE; Hazleton, PA; Nashville, TN; Farmers Branch and Friendswood, TX, and Culpeper and Herndon, VA). Although it is argued that this last type of measures have no direct effect on the immigrant community or significantly modify already established norms, they have been interpreted as a symbolic act of rejection on the part of the community. In Nashville, the mayor vetoed this measure after deeming it mean-spirited, unconstitutional and unnecessary,<sup>10</sup> but other states and cities (for example, Arizona; Beaufort County, SC; Cherokee County, GA; Hampshire, IL; Taneytown, MD; and Bridgeport, PA) have approved adopted similar ordinances; in some cases they have passed unanimously.

Critics say these laws do not add up to serious, integral reform and “do nothing to impose order or consistency where it’s needed: at the federal level” (*New York Times*, July 20, 2006).<sup>11</sup> Quite the opposite: they evidence the existing legal vacuum (at least in regard to the application of the law), cause fear among immigrant communities, fuel social tensions, alienate businesses that depend on an immigrant workforce, create a hostile housing market where landlords are charged with enforcing immigration law and, in some cases, even reproduce existing laws. According to Witold J. Walczak, legal director of the American Civil Liberties Union (ACLU) of Pennsylvania, “immigration reform is an important issue, but if every little town like Hazleton across the 50 states makes up their own rules about immigration, we’re going to be left with an even bigger mess” (Rubinkam,

<sup>8</sup> During the elections of November 7, 2006, Colorado state voters narrowly approved two ballot measures aimed at controlling immigration: “Referendum H, which denies a state tax credit to employers who knowingly hire undocumented workers, squeaked by with 50.8 percent of the vote ... Referendum K, which directs the attorney general to sue the federal government to demand enforcement of immigration laws, fared slightly better with 56 percent support. Sponsors believe the two measures didn’t attract more backing because voters were largely satisfied with bills passed during the regular and special sessions of the legislature aimed at illegal immigrants. In all, lawmakers passed 17 such bills.” Others said that “immigration wasn’t as big of an issue as many made it out to be” (Quintero, 2006).

<sup>9</sup> On November 7, 2006, Arizona voters approved four immigration measures. Proposal 103, one of the most controversial, declared English the official language of the state (there are some exceptions, such as legal proceedings). Proposal 300 requires citizenship for eligibility for various subsidized services such as in-state tuition and financial assistance. Proposal 100 denies bail to persons charged with serious felonies who are in the country illegally so that they cannot leave the country before going to trial. Proposal 102 denies the award of punitive damages in civil court cases to illegal immigrants, a measure that protects employers from incurring high costs in the event of workplace injuries.

<sup>10</sup> See “A smart veto from the mayor of Nashville”, *Houston Chronicle*, February 13, 2007.

<sup>11</sup> See also *Los Angeles Times*, November 2, 2006 and *Washington Post*, October 2, 2006).



2006). Those in favor of instituting such measures argue that states and townships are not trying to replace federal law: they are merely reinforcing existent laws and ordinances in the face of federal inability to control undocumented immigration.<sup>12</sup>

This situation has led to local and state proceedings that some consider might even reach the Supreme Court. Legal experts say that “federal law forbids states from enacting stricter criminal or civil penalties for undocumented immigration than those adopted by Congress” (Schlezig, 2006). The ACLU and the Puerto Rican Legal Defense and Education Fund (PRLDEF), along with other organizations, have already sued several townships. In some cases this has led to the ordinances being blocked or revoked. The organizations have represented immigrant groups, legal residents, landlords and business owners who have been discriminated against or suffered losses as a result of the ordinances; they argue that the federal government has exclusive powers over immigration policy and though the townships “may disagree with federal policies or the manner in which the federal government is performing its job with respect to immigration” this is not a task that “thousands of . . . cities and municipalities across this country can take on” (Harlow, 2006). They also point out that these ordinances violate housing and civil rights that forbid racial or ethnic discrimination, specifically target and discriminate against Hispanics, and imply that any person who is or appears to be a foreigner is immediately suspected of being in the country illegally, regardless of whether this is true or not.<sup>13</sup>

In addition to the lawsuits, these proposed measures have led to protests and mobilizations among churches, unions, business associations, immigrant’s rights groups, Latino association such as LULAC and MALDEF and civil organizations. In the case of Farmer’s Branch, for example, the volunteer group “Let the Voters Decide” took to the streets on November, 2006, to gather the 700 signatures required to rescind ordinance 2892, which would have heavily fined landlords who failed to verify the legal status of their tenants (Galván, 2006). In fact, many townships have halted the passing of their ordinances while they wait for the outcome of ongoing lawsuits or have rescinded them under pressure from the ACLU and other groups (e.g. Manassas, VA; San Bernardino, CA; Palm Bay, FL; Elsmere, DE; y Avon Park, FL). In the case of Hazelton, Pennsylvania, which has received ample media attention, the city’s Illegal Immigration Relief Act—an ordinance penalizing those hiring or renting to undocumented immigrants—was blocked by a federal judge. The suit, filed by the PRLDEF, the ACLU and others, stated that Hazelton exceeded its authority in the field of immigration law and that the ordinance was discriminatory. While a district judge issued a temporary order to stop

<sup>12</sup> See Harlow, 2006.

<sup>13</sup> After a suit brought by the ACLU, a federal judge blocked the city of Escondido, California “from enforcing a law that punishes landlords for renting to illegal immigrants. [The judge] had serious questions about whether the law would survive legal scrutiny and that it may inflict ‘irreparable harm’ on tenants and landlords” (Spagat, 2006; see also Fried, 2006).





the enforcement of the ordinance, the mayor has declared that he will not give up and, if necessary, will take the case to the Supreme Court.

Even though many of the ordinances have not been enforced yet or have been rescinded, they have nevertheless achieved one of their major goals: faced with open discrimination, many Hispanic residents, both legal and undocumented, have left their towns—a decision that has resulted in economic losses for these areas. According to mayor Barletta, some 5,000 Hispanics have left Hazelton since the ordinance was proposed. Business owners point out that their sales have diminished between 20 and 50 percent and at least two businesses had to close down. In the case of Riverside, New Jersey, where the dwindling undocumented population is mostly of Brazilian origin, losses have been estimated at 40 percent (Harlow, 2006). Arguably, local communities will resent these losses once they realize the economic benefits of immigration.<sup>14</sup> However, some Hazelton residents see this as a positive change and argue that “drug dealers and murderers and thieves” are finally leaving town (Barry, 2006).

### *Responses to the presence of day-laborers<sup>15</sup>*

In the past few years there has been an increase of day-laborers in suburbs where Latino immigration was traditionally low. This reflects a general change in migratory patterns, which are now characterized by the expansion of immigrant networks toward small cities in the Midwest and Southeast regions of the United States. Currently, these areas present opportunities of informal employment in the construction and domestic service sectors. The growing presence of immigrants and their limited access to a formal employment structure has become a problem for these communities. There are concerns regarding the day-laborers' tendency to gather on the streets or close to stores and businesses while waiting to be hired<sup>16</sup> and, in some cases, they also inhabit overpopulated, unsanitary quarters. In some places, local governments or community groups have established hiring centers as a temporary solution (e.g. Houston, TX<sup>17</sup>; Denton,

<sup>14</sup> In the case of Hazelton, the growth of the Hispanic population started “when the state of Pennsylvania began offering huge tax breaks to attract new businesses. And it worked, ushering in a period of growth and prosperity. Factories, distribution centers and office parks sprung up creating 5,000 jobs, many of them for unskilled labor... In the year 2000, Latinos represented just five percent of the population. Today, the figure is 30 percent” (Kroft, 2006; see also Barry, 2006).

<sup>15</sup> Part of this section has been previously published under the title “Jornaleros (Day-Laborers),” *Boletín Temático*, Instituto de los Mexicanos en el Exterior, vol. 2, number 1, April 2006.  
<[http://www.ime.gob.mx/noticias/boletines\\_tematicos/Jornaleros.pdf](http://www.ime.gob.mx/noticias/boletines_tematicos/Jornaleros.pdf)>

<sup>16</sup> According to Valenzuela et al. (2006), between 25 and 200 day-laborers gather daily in specific locations to seek work. Seventy-nine percent of these locations are informal: 24 percent of day-laborers meet in front of businesses, 22 percent in front of home improvement stores, 10 percent in gas stations and 8 percent in high-traffic streets. Only one in five goes to a formal hiring center.

<sup>17</sup> Houston has several hiring centers financed by the city authorities. However, some laborers continue to solicit work on the streets, which has led to arrests and criticisms on the part of the local population.



TX<sup>18</sup>; Fort Worth, TX; Chandler, AZ<sup>19</sup>; Phoenix, AZ; Laguna Beach, CA; Burbank, CA<sup>20</sup>; Jupiter, FL<sup>21</sup>, Herndon, VA; Lakewood, NJ). Other measures include setting up helplines where laborers can report abuses (e.g. Santa Cruz, CA<sup>22</sup>) and supporting day-labor centers.<sup>23</sup> In other areas, however, the anti-immigration backlash has included marches against day-laborers, protests by the “Minutemen Project,” evictions from over-crowded property, arrests, anti-loitering initiatives, ordinances forbidding immigrants from offering their services in public places (Glendale, CA; Gaithersburg, MD), harassment of employers who hire them, and opposition against hiring centers.<sup>24</sup>

The hiring center debate is largely about the financing of these establishments and whether the money should come from public funds. Those in favor of public financing argue that local governments should acknowledge the underlying supply and demand issues and provide a solution, even if it is just temporary. Those against it state that this would tacitly support undocumented immigration and employ taxpayers’ money to do so, a violation of federal law.<sup>25</sup> Some groups argue that Home Depot, the nationwide home improvement and construction retailer around which many day-laborers gather, should subsidize the hiring centers. The cities of Farmingville, New York and Herndon, Virginia, have been involved in two of the most notorious cases involving day-laborers and can be seen as representative of other townships where tensions have escalated. It should still be pointed out, though, that many other places have shown con-

<sup>18</sup> Members of the Minutemen Project, which has organized a national campaign to expose employers who hire day-laborers and stop more hiring centers from opening, have protested in Denton. However, this has not stopped the flow of workers and employers at the local hiring center.

<sup>19</sup> Chandler’s Light and Life Day Labor Center is run by a Methodist congregation in response to popular complaints regarding traffic problems caused by the presence of day-laborers. In order to promote the use of the hiring center, the police began ticketing employers who stopped on Arizona Avenue to pick up workers. The center has organized educational campaigns on workers’ rights and sought the help of the Mexican consulate in the prevention of abuses.

<sup>20</sup> Burbank authorities requested that Home Depot establish a hiring center. This would prevent the laborers from gathering on the sidewalks and the store’s parking lot, and provide a proper space for negotiation. A Catholic group operates the center, which was the first of its kind nationwide. Recently, other towns and cities (Woodland Hills, Monrovia, Glendale en California and Washington, D.C.) have requested that *Home Depot* establish similar centers and/or finance their operation.

<sup>21</sup> Jupiter recently approved the creation of the Jupiter Neighborhood Resource Center, which has been supported by local unions.

<sup>22</sup> The Santa Cruz police department has set up a direct helpline that allows day-laborers in the area to report labor abuse. The project guarantees that the police will not investigate the workers’ immigration status.

<sup>23</sup> See Fine, 2005.

<sup>24</sup> In Tucson, Arizona, the police recently strengthened its measures to regulate day-laborers presence on the streets after residents complained. In the past few months, police in Cicero (a suburb of Chicago, Illinois) have arrested more than 50 day-laborers in the area, prompting protests on the part of day-laborer defense groups. On the other hand, the local Home Depot has been accused of supporting illegal immigration and has hired a mediator in an attempt to solve disputes regarding the presence of day-laborers in the vicinity of its premises.

<sup>25</sup> See, for example, Delson, 2006.



siderable tolerance toward day-laborers and supported the creation of hiring centers.

### *Farmingville, New York*

The hamlet of Farmingville, part of the Town of Brookhaven, is located in Suffolk County, in the Long Island suburban area. In 1970, 95 percent of the population was white; currently, there are over 300,000 Hispanic immigrants—most of them are Salvadorians, followed by Mexicans, Hondurans Colombians and Ecuadorians (Gordon, 2005). It is a traditionally conservative community and immigrant flow is perceived as a threat to local values. The recent social changes have led to the creation of anti-immigrant coalitions and even two violent attacks against day-laborers and their families.<sup>26</sup> The town has received ample media attention and was even the subject of an award-winning eponymous documentary.<sup>27</sup>

In 1994, Glenn Cove became the first East Coast city to open a day-labor hiring center. One of the proposed solutions to the escalating tensions in Farmingville was to create hiring centers financed by the local government, a measure supported by Nassau County Executive Thomas Suozzi (D) and implemented in Freeport, Huntington Station and Long Island. The proposal was rejected by the local council under pressure from several community groups. County Executive Steve Levy (D) backed a series of restrictive policies involving day-laborers that included selective evictions from over-crowded premises without regard for the notice and relocation grace periods established by the law.<sup>28</sup> After the eviction of nearly 200 people (most of them Latino immigrants) from some 11 premises during the summer of 2005, the area's day-labor centers and activist groups (Workplace Project among them) put up tents for the evicted and named the camping zone "Levyville." The PRLDEF took the case to a federal court that ruled, on December 16, 2005, that Brookhaven authorities discriminated against the day-laborers and ordered the city to give previous notification in the case of eviction (PRLDEF, 2006).

Other New York state cities such as Brewster, Mamaroneck, Patchogue, Greenport and East Hampton are considering the establishment of hiring centers

<sup>26</sup> In 2000, two men led a pair of day-laborers to a warehouse on the pretense of offering them work. The laborers were then beaten with working tools and suffered serious injuries. The two men were charged with committing racially motivated attacks. In 2003, a group of teenagers attacked the home of a Mexican family with fireworks. No one was hurt but the property was badly damaged.

<sup>27</sup> *Farmingville*, directed and produced by Catherine Tambini and Carlos Sandoval, won the 2004 Special Jury Prize at Sundance Film Festival.

<sup>28</sup> Other cases of eviction from over-crowded properties (usually inhabited by illegal immigrants) have taken place in Virginia, Massachusetts and Georgia.



given the xenophobic reactions of some groups that object to the presence of immigrants on the streets. This is also the case in Freehold, Morristown, Lakewood and Passaic in New Jersey. The PRLDEF and others argue that day-laborers have the constitutional right to seek work in public places. At the same time, anti-immigrant groups such as the United Patriots of America have organized nationwide protests with the slogan “Stop the Invasion” in order to pressure local authorities into implementing more restrictive immigration policies. In Danbury, Connecticut, mayor Mark Boughton (R) started a day-laborer control campaign in response to the demands of anti-immigrants groups such as Connecticut Citizens for Immigration Control. He also joined Levy to create Mayors and Executives for Immigration Reform, an organization that includes over 60 elected officials from 30 U.S. communities and seeks to pressure the federal government into compensating localities that incur costs pertaining to undocumented immigration. This is yet another example of local attempts at regulation in the face of federal inaction (*New York Times*, March 11, 2006).

### *Herndon, Virginia*

During the 1990s, the number of Latinos in the city of Herndon, Virginia grew 264 percent—which means that four out of every ten residents are foreign-born. Immigrants, legal or undocumented, have taken jobs in the construction and home improvement industry or the domestic service sector. Until December 2005, between 60 and 100 Latino immigrants would gather outside the 7-Eleven convenience store, waiting to get hired. The disorganized and unsanitary environment became cause for concern among the local population. City mayor Michael O’Reilly suggested the establishment of a hiring center but his initiative was shut down after complaints by anti-immigrant groups and Virginia’s candidate for governor, Republican Jerry W. Kilgore. A group of churches and community leaders supported by the HEART organization (Herndon Embraces All With Respect and Tolerance) organized Project Hope and Harmony, which obtained approval to establish a temporary hiring center inside the former police station. A wave of criticism, protests and lawsuits did not stop the center from opening in December 2005. Since then, opposition has diminished even though groups like Help Save Herndon are still trying to close it down. The center distributes work using raffle tickets and maintains a strict code of conduct to avoid conflict.<sup>29</sup>

<sup>29</sup> After the election of a new Town Council (which retained only two of its original members) Herndon officials are seeking to replace Reston Interfaith, a nonprofit group of religious organizations that operates the town’s day-labor center, with a firm that will require workers to prove they are in the country legally. “Reston Interfaith asks that those seeking work provide only a name, address and telephone number. ... Casa of Maryland, which operates three labor sites in that state, doesn’t check documents. [The town may also] look for a firm that can provide a new home for the labor center, which is close to residential neighborhoods near the Loudoun County line” (Turque, 2006).



Herndon's experience has influenced other townships in Virginia, Maryland and Washington D.C. The cities of Gaithersburg, Arlington, Silver Spring and Wheaton have all established hiring centers in spite of opposition, thus curbing day-laborer street gatherings and their resulting problems. In the case of Silver Spring, in Maryland, the anti-immigrant protests of ten years ago have given way to a much more tolerant community (immigrants now comprise 40 percent of the population) and the establishment of day-labor centers. Prince George County, also in Maryland, is considering opening one, as the general consensus is that these centers are preferable than the disorganization and social tension that arises from day-laborer street gatherings in parking lots, churches or busy street corners.

### *Successful lawsuits*

In recent years, the PRLDEF, the ACLU and other civil rights groups have won important lawsuits involving discrimination and civil rights violations against day-laborers. These victories constitute important precedents in the field of immigrants' civil and labor rights. In November 2006, the PRLDEF reached an agreement with the government of Freehold, New Jersey, after a three-year trial involving a local ordinance that barred day-laborers from soliciting work on the street and included other measures deemed as discriminatory. The agreement established that the county would not interfere with the legal use of public property and would allow employers to hire day-laborers on the street; would not inspect premises without issuing previous notification, informing residents of their rights and obtaining their permission, nor would it involve the police in these activities; would reimburse those who had been previously fined for loitering, failing property inspections or had been charged based on unfounded, anonymous complaints, and would cover the plaintiffs' lawyer's fees (Martínez Tutek, 2006; *Diario HOY*, November 14, 2006). In May 2006, a federal judge barred police in Redondo Beach, California, from arresting laborers for violating an ordinance against soliciting work on the streets (Santos, 2006).

In September 2006, the PRLDEF sued the authorities of Mamaroneck, New York, on behalf of six day-laborers who claimed discrimination and harassment. The authorities were accused of violating the rights of freedom of association and expression when they closed down a hiring center located in Columbus Park and monitored the activities of day-laborers and their employers.<sup>30</sup> In November 2006, a federal judge ruled that the city's patrolling activities, the closing down

<sup>30</sup> The original suit claimed harassment (an attack on the workers' rights to free speech and free association) and discrimination. Judge Colleen McMahon ruled that the plaintiffs' immigration status was irrelevant to the discrimination suit but said the defense had a right to inquire about it in order to determine their rights under the First Amendment. The plaintiffs' lawyer, Alan Levine from the PRLDEF, disagreed with this ruling and dropped all claims of First Amendment violations rather than reveal his clients' immigration status (Ferrette, 2006).



of the hiring center and the ticketing of laborers and their employers constituted discrimination. The judge suggested that both sides present proposals for a bipartisan solution, but an agreement has yet to be reached. After the ruling, the PRLDEF's president, César Perales, said: "This sends a very clear message to local governments all over this country that day laborers have rights and that municipal governments that ignore those rights will be held responsible" (Santos, 2006a).

#### LOCAL DEBATE AS A NATIONAL INDICATOR

The results of several local elections evidence the deepening divisions between the regulation of undocumented immigration, the existing need for a workforce, and the social tensions arising from associated problems. According to Tamar Jacoby, politicians who espouse restrictive anti-immigration measures and ignore the role immigrant workers play in a diversity of economic sectors risk alienating "businesses, both those that employ immigrants and those that see them as potential customers" as well as political moderates (Jacoby, 2006a). This was certainly the case during the surprising outcome of Long Island<sup>31</sup> and Virginia<sup>32</sup> local elections in November, 2005. At the same time, Herndon's mayor, who had explicitly supported pro-immigrant measures, lost his bid for reelection in May 2006.<sup>33</sup>

The immigration debate cannot be split along lines of political affiliation; both Democrats and Republicans have internal disagreements on the subject. The November 2006 elections certainly addressed immigration reform and the pres-

<sup>31</sup> On November 20, 2005, the *New York Times* reported on the results of the Long Island elections, which surprised some analysts): "It is worth taking note of a particular subset of losers in the Nov. 8 elections. They were the candidates who tried to win votes through appeals to fear and anti-immigrant resentment. For all the talk of suburban outrage at the supposed onslaught of day laborers and Latino gangs, it wasn't the hyperventilating candidates who won ... Those who may have tiptoed around the immigration issue for fear of inflaming voter outrage might want to consider the possibility that there is little outrage to inflame—just a burning desire to have a sober discussion about a complicated and challenging problem" (*New York Times*, November 20, 2005).

<sup>32</sup> In Virginia, Republican candidate Jerry W. Kilgore surprisingly lost the November 2005 gubernatorial election. His campaign was characterized by a conservative outlook and support for restrictive immigration measures. Although Virginia is a predominantly Republican state and its population is concerned about illegal immigration, the results showed that its voters prefer "moderate and pragmatic" policies that entail feasible solutions (see *Washington Post*, December 17, 2005; Chávez, 2005).

<sup>33</sup> Herndon's former mayor, Michael O'Reilly, lost the May 2006 election to local resident Steve DeBenedittis, who opposed the day-labor center established in December 2005 with O'Reilly's support. The City Council members were also replaced by opposition members and since then the city has pursued an aggressive campaign against illegal immigration. Herndon's council voted "to apply to U.S. Immigration and Customs Enforcement for enrollment in the agency's "Section 287(g)" program, which trains local police officers to determine whether criminal suspects in custody are illegal immigrants." Herndon is among the first cities to enroll in this program (see Turque and Brulliard, 2006, and *The Washington DC Examiner*, October 13, 2006).



ence of undocumented immigrants, but the results did not show any clear bias toward anti-immigrant measures or comprehensive immigration reform<sup>34</sup>—a significant appraisal of the ambivalent reactions (both public and political) to the costs and benefits of undocumented immigration and the difficulty of achieving a balanced response.<sup>35</sup> Although local exasperation is regrettable, all the more since it evidences the flaws in the current immigration system and has resulted in civil rights infringements, it can be channeled toward positive outcomes. There have been nationwide mobilizations on the part of factions interested in engaging in constructive dialogue. Although anti-immigrant groups often have more available resources than immigrant defense coalitions, the recent legal achievements are a testament to the strengthening and growing influence of immigrant’s rights networks on a local scale.<sup>36</sup>

While the immigration debate continues to stagnate in Congress, local responses in small hubs of immigration flows send a very clear message about the need for federal action. In addition to these responses, between February and May of 2006, multitudinous marches in favor of comprehensive immigration reform evidenced the growing importance of this issue among civil society groups not traditionally involved in this debate. The question is whether all of these popular demonstrations will influence the federal government—and if so, how. John Torpey’s analysis (2000) on the decentralization of border control in recent decades could explain some of the reasons why the U.S. federal government would consider the transference of immigration control to the local level a less costly political choice than any attempt to satisfy all involved parties with an overhauling of present immigration law. According to Torpey, delegating responsibility to other institutions and governmental actors allows the State to reconcile national interests more easily, calm popular anxiety, reduce costs incurred by the exercise of control and regulation, and even act undemocratically without facing the political costs involved in specific allegiances or partiality.

<sup>34</sup> There are differences of opinion regarding the importance of the Latino vote. Some authors argue that it substantially affected electoral results by rejecting Republican candidates who espoused tough immigration measures: 73 percent of Latinos voted for the Democratic Party, 26 percent for the Republican Party. Only 9 percent of Latinos identified immigration as one their major concerns; education, the economy, employment issues and the war in Iraq were considered more important. Analysts such as Tamar Jacoby argue that taking a moderate position on the subject of immigration could earn the Republican Party more votes from the fastest-growing voting bloc in the country. However, it must be pointed out that some Democratic candidates won the election despite espousing tough immigration measures (See Jacoby, 2006, and Bustamante, 2006).

<sup>35</sup> For a detailed discussion see Cornelius, 2000.

<sup>36</sup> An interesting example is the case of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which “backed sanctions against illegal immigrants until a policy shift in 2000.” It then decided to “join forces with a national network of day-laborer organizers in a push for worker rights and legalization for unauthorized workers ... The agreement offers [the day-laborers] access to expert lobbyists and lawyers and a chance to devise strategies with local councils of the AFL-CIO” (Brulliard, 2006).



The U.S. government will probably come under increasing pressure to resolve the immigration issue, especially if we consider that the legal obstruction of many local ordinances and initiatives means that local determination will not result in an increased regulation of immigrant flow. This could lead to increasingly radical actions demanding immediate federal response, which, however, could continue to fall along the lines of increased border control rather than the implementation of guest worker programs or the regularization of the more than 12 million undocumented immigrants already residing in the country. Such measures would once again fail to address the root of the problem and the concerns of the diverse factions involved. In the meantime, ill-advised responses on the part of townships will continue to threaten immigrants' civil rights, and although recent legal victories have asserted constitutional law, court decisions cannot reign in social tensions, xenophobia and discrimination. In the words of the *New York Times*, "you can't impose common sense from the bench" (*New York Times*, November 24, 2006). The role and potential impact of small businesses and employers, which so far have had little active presence in the overall debate but do depend on immigrants as part of their workforce and in many cases as consumers of their products, needs to be examined more thoroughly as it could influence both local and federal policies.

Mexico and other countries seeking to influence the immigration debate in the United States must forcibly take local aspects into account when designing their lobbying strategies. As popular confrontations clearly indicate, the struggle against negative stereotypes held by the general public (starting in small communities and townships) is one of the major challenges faced by immigration reform. In this sense, the efforts of a wide network of local and national organizations (e.g. unions, churches, media outlets, NGOs, community centers) that acknowledge immigrants' contributions to U.S. society and economy should play a crucial role. They have amply demonstrated their ability to organize, promote pro-immigrant measures and defend immigrants' rights, and even though they have not always been successful, their presence shows that not all sectors of U.S. society have a negative view of immigrants or agree with the implementation of restrictive measures. Limiting lobbying activities to the White House and Congress is insufficient in the face of such widespread popular participation. Mexico has the most extensive consular network in the United States: it could make good use of its local knowledge and, with the support of civil groups, develop extensive strategies that target existing preconceptions of the immigrant population at the same time that they educate the public on immigrants' rights. Focusing on the suburbs and small townships that are now dealing with immigration flows—rather than on the major cities or the capital—could positively influence the ongoing immigration debate in the United States.





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